IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR.JUSTICE K.P.BALACHANDRAN

THURSDAY, THE 24TH MAY 2007 / 3RD JYAISHTA 1929

MFA.No. 1342 of 1995()

(AGAINST THE AWARD DT.19.5.1994 IN OP(MV) NO.618/92, OF THE ADDL. MOTOR ACCIDENTS CLAIMS TRIBUNAL, MAVELIKARA.)
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APPELLANT: CLAIMANT

C.K.CHELLAPPAN PILLAI, S/O.KRISHNA PILLAI,
HOUSE NO.229, LAKSHAM VEEDU COLONY,
ARANOOTTIMANGALAM MURI.P.O.,
VETTIYAR VILLAGE, MAVELIKARA.

BY ADV. SRI.K.SASIKUMAR
SMT.K.V.BHADRA KUMARI

RESPONDENTS: RESPONDENTS
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1. SOMASEKHARA KURUP, S/O.SANKARA PILLAI,
KANNIMEL HOUSE, PALA MURI,
KANNAMANGALAM VILLAGE, MAVELIKARA.

2. GENERAL MANAGER,
KERALA STATE ROAD TRANSPORT CORPORATION,
THIRUVANANTHAPURAM.

*** 3. JAFFAR KHAN, S/O.AHAMMED KHAN,**
HOUSE NO.11, UNION HIGH SCHOOL ROAD,
COIMBATORE 641 001. (DELETED)

4. M/S.K.PONNAN, 18/173, UNION HIGH SCHOOL ROAD,
COIMBATORE 641 001.

**5. UNITED INDIA INSURANCE COMPANY LTD.,
P.B. NO.54, COIMBATORE REP.BY ITS DIVISIONAL
MANAGER, UNITED INDIA INSURANCE COMPANY LTD.,
OOPPOOTTIL BUILDING, K.K.ROAD, KOTTAYAM.**

*** THE 3RD RESPONDENT IS DELETED FROM THE PARTY ARRAY AT THE RISK OF THE APPELLANT AS PER ORDER DT.9.4.07 ON IA. NO.1342/1995.**

**BY ADV. SRI.M.S.PATTALI) - R5
SMT.JESSY GEORGE)**

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 24/05/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B. KOSHY and K.P.BALACHANDRAN, JJ.

M.F.A.No.1342 of 1995

Dated this the 24th day of May, 2007

Judgment

Koshy, J.

Appellant met with a motor accident on 21.9.1987 while he was travelling as a passenger in a K.S.R.T.C. bus. The above bus collided with a lorry insured by fifth respondent insurance company. He claimed compensation of Rs.1,20,190/- for the injuries suffered by him. The tribunal found that the accident occurred due to the negligence of the driver of the K.S.R.T.C. bus as well as the driver of the lorry insured by the fifth respondent. However, the tribunal awarded only Rs.15,000/- as total compensation with interest. Only quantum of compensation is disputed in this appeal.

2. Ext.A22 wound certificate shows that the appellant suffered the following injuries:

> "Multiple fracture of metatarsal 2nd, 3rd, 4th and 5th. Fracture proxymal phalanx big toe."

Ext.A24 is the discharge card issued from the Medical College Hospital, Alappuzha and the appellant underwent inpatient treatment from 21.9.1987 to 2.10.1987. He was further treated from 3.10.1987 onwards in the Cochin Naval Hospital and he was an inpatient till 17.10.1987. By Ext.A27 certificate doctor assessed the disability at 35%. The tribunal did not accept Ext.A27 medical certificate because it was not given by the doctor who treated him. There is no rule that disability certificate should be issued by the same doctor who treated the patient. Permanent disability can be assessed at a later stage by a specialist. In this case, the specialist who issued Ext.A27 certificate was not examined. Considering the nature of injuries, we also feel that the percentage of disability is excessive. However, we are of the opinion that considering the nature and long treatment, fracture involved, its after effect etc. at least 10% ought to have been fixed as disability. According to the appellant, he was a beedi roller and he was also selling the same. He was getting Rs.1,500/- per month. There is no evidence that he was having any employment at the time of accident. The tribunal did not assess the monthly income, but, only

awarded a global compensation of Rs.15,000/-. Even if we take Rs.900/- as the monthly income and take 10% as the disability, compensation payable will be only

$$\text{Rs.900} \times 12 \times \frac{10}{100} \times 11 = \text{Rs.11,880/-}.$$

We award Rs.5000/- towards the prolonged inpatient treatment and Rs.600/- for transportation as he was first admitted in the Medical College Hospital and thereafter transferred to Naval Hospital. After the inpatient treatment, he had outpatient treatment for two months and he was completely disabled. So, we award Rs.1,800/- towards loss of actual income and Rs.2,000/- towards treatment expenses. We also award Rs.200/- for loss of dress and articles and Rs.500/- towards attendant's expenses. Thus, the total compensation payable will be Rs.21,980/-. The tribunal has awarded only Rs.15,000/- as compensation. The additional compensation payable will be Rs.6,980/- rounded to Rs.7,000/-. The above amount of Rs.7,000/- with 9% interest from the date of application till the date of deposit should be deposited by the second respondent and third respondent in equal proportion within three months from the date of receipt of a copy of this judgment. Since the accident occurred in 1987, on

deposit of the amount, the amount should be disbursed to the appellant.

Appeal allowed partly.

J.B.KOSHY
JUDGE

K.P.BALACHANDRAN
JUDGE

vaa

J.B. KOSHY AND
K.P.BALACHANDRAN, JJ.

M.F.A. NO.1342/95

JUDGMENT

Dated:24th May, 2007